

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE: NATIONAL PRESCRIPTION OPIATE
LITIGATION**

This document relates to:

County of Trumbull, Ohio v. Purdue Pharma, L.P.
et al., Case No. 18-op-45079;

The County of Lake, Ohio v. Purdue Pharma L.P.,
et al., Case No. 18-op-45032

Track 3

MDL No. 2804

Case No. 17-md-2804

Judge Dan Aaron Polster

RESPONSE TO SPECIAL MASTER COHEN OCTOBER 26, 2020 REQUEST

CVS Pharmacy, Inc., CVS Rx Services, Inc., Ohio CVS Stores, L.L.C., CVS Indiana, L.L.C., Giant Eagle/HBC Service Co., Rite Aid of Maryland, Walgreens Boots Alliance, Inc., Walgreen Co., and Walgreen Eastern Co., and Walmart Inc. (hereinafter “Pharmacy Defendants”) hereby respond to Special Master Cohen’s e-mail request of October 26, 2020.

That e-mail is attached as Ex. A.

Pharmacy Defendants maintain their objection that Plaintiffs have not identified any statute or regulation either (1) that legally could give rise to a claim for public nuisance under Ohio law; or (2) the violation of which has allegedly caused any unreasonable interference with a public right.¹ Pharmacy Defendants also object to simply quoting statutory and regulatory language to the jury rather than the giving them the elements of any violation and allowing them

¹ CVS believes that 1301.71(a) is not applicable and thus does not believe that the jury should be instructed regarding any portion of 1301.71(a). Consequently, CVS does not join the other Pharmacy Defendants in proposing the inclusion of 1301.71(a). However, because Plaintiffs have included that regulation in their submission, CVS agrees that, should this Court quote any portion of 1301.71(a), it should quote the entirety of the subsection as proposed in Ex. B.

to determine if such violation occurred. The meaning of the statutes and regulations is a question of law, which must be decided by this Court, and it would be error to leave that inquiry to the jury. By complying with the Special Master's request, the Pharmacy Defendants do not waive these or any other objections, as the Special Master himself acknowledged. *See* Ex. A.

If the Court overrules the Pharmacy Defendants' objections and quotes statutes and regulations to the jury, the full list of statutes and regulations attached as Exhibit B should be provided to the jury. Pharmacy Defendants anticipate that they will need to add additional language after Plaintiffs provide the list of statutes on which they plan to base their claims, and expressly reserve their right to do so.

Dated: November 6, 2020

Respectfully submitted,

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